

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MAYER REPROGRAPHICS, INC.)	FCC File No. 0000645662
)	
Application for Modification of Authorization for)	
Station KNGK514, San Diego, California)	

ORDER ON RECONSIDERATION

Adopted: June 2, 2003**Released: June 4, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a Petition for Reconsideration and Request for Initiation of License Revocation Proceedings, filed by Agnes Pennington dba Radio America (Pennington) on February 6, 2002.¹ The Pennington PFR seeks reconsideration of the January 7, 2002 grant of the above-captioned application of Mayer Reprographics, Inc. (Mayer) to modify its license to operate Station KNGK514, San Diego, California. It also requests that the Commission revoke Mayer's authorization to operate Station KNGK514. For the reasons set forth below, we deny the Pennington PFR.

2. *Background.* On March 1, 2000, the Commission renewed Mayer's authorization to operate Station KNGK514 on 811.475/856.475 MHz using a community repeater located at Mount San Miguel in San Diego. On July 10, 2001, Pennington submitted a complaint to the Commission's Enforcement Bureau requesting that the Commission cancel Mayer's license pursuant to Section 90.157 of the Commission's Rules, on the grounds that Mayer did not operate the station for a period of more than twelve months.² On October 31, 2001, Mayer filed an application to modify its license to relocate the transmitter to another location in San Diego.³ On November 15, 2001, Pennington filed an informal request for Commission action seeking denial of the Modification Application, on the grounds that the license had cancelled automatically pursuant to Section 90.157.⁴ On January 7, 2002, the Commission granted the modification application.

3. On February 6, 2002, Pennington filed a petition for reconsideration of the grant, and requested that the Commission cancel Mayer's license. Pennington argues that the license for Station KNGK514 cancelled automatically, pursuant to Section 90.157 of the Commission's Rules, because Mayer did not operate the station for a period of more than twelve months.⁵ Specifically, Pennington

¹ Petition for Reconsideration and Request for Initiation of License Revocation Proceedings, filed Feb. 6, 2002, by Agnes Pennington dba Radio America ("Pennington PFR").

² Letter, dated July 10, 2001, from Agnes Pennington to Federal Communications Commission, Enforcement Bureau (attached to Pennington PFR as Exhibit 1); *see also* 47 C.F.R. § 90.157 (station license automatically cancels when a station ceases to operate for more than one year.)

³ FCC File No. 0000645662 (filed Oct. 31, 2001).

⁴ Letter, dated Nov. 15, 2001, from Agnes Pennington to Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Land Mobile Branch.

⁵ Pennington PFR at 1.

submits an affidavit from the operator of the community repeater at Mount San Miguel stating that Mayer cancelled its service agreement effective December 31, 1999, and that the community repeater was dismantled on March 20, 2000.⁶ Pennington also states that she monitored the frequency for more than a year after that date, and did not detect any activity by Mayer.⁷ Pennington also states that Henry Mayer told her in July 2001 that Mayer was using the frequency as a mobile-only system without the repeater.⁸ Based on the fact that Mayer did not file the modification application until October 31, 2001, Pennington contends that Mayer did not operate Station KNGK514 for a period of more than twelve consecutive months, resulting in the automatic termination of its authorization for Station KNGK514.

4. On February 11, 2002, the Licensing and Technical Analysis Branch ("LTAB") of the Public Safety and Private Wireless Division (Division), Wireless Telecommunications Bureau directed Mayer to submit information regarding the operational status of Station KNGK514.⁹ On June 24, 2002, the Division's Policy and Rules Branch ("PRB") directed Mayer to submit evidence demonstrating operation of Station KNGK514, including evidence that it operated the station by transmitting and receiving radio signals between a base station and mobile stations, during the period from December 31, 1999 through March 8, 2002.¹⁰ PRB stated that this evidence could consist of, but was not limited to, station specific canceled checks, system maintenance records, and sworn affidavits from employees who used the system from December 31, 1999 through March 8, 2002.¹¹ Mayer responded to the LTAB inquiry on March 9, 2002,¹² to the Pennington PFR on March 14, 2002,¹³ and to the PRB inquiry on August 19, 2002.¹⁴

5. With respect to Pennington's allegation that the transmitter for Station KNGK514 was dismantled on March 20, 2000, Mayer explained that it "made a transition from using a community repeater to using our own repeater," but is "unable to pinpoint the specific dates."¹⁵ Mayer states that its Mount San Miguel transmitter site and its mobile relay remained physically located in the "exact same location and in the same building in which it had always been in" through the end of 2001.¹⁶ Mayer further indicates that it did not remove its equipment from this location until February 14, 2002, and began transmitting from its new site on March 8, 2002, pursuant to the modification granted by the Commission on January 7, 2002.¹⁷ It provided a letter dated February 14, 2002 from Pinnacle Towers Inc., which owns the Mount San Miguel site, stating that Mayer's equipment for Station KNGK514 was

⁶ *Id.* at 2-3, Ex. 5.

⁷ *Id.* at Ex. 1.

⁸ *Id.* at 3.

⁹ Letter, dated Feb. 11, 2002, from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Jack Mayer, Mayer Reprographics, Inc.

¹⁰ *See* Letter, dated June 24, 2002, from John Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division to Mayer Reprographics, Inc.

¹¹ *Id.*

¹² *See* Letter, dated Mar. 9, 2002, from Jack Mayer, Mayer Reprographics, Inc., by Annette Ritchie, Federal Communications Commission at 3 ("Mayer Response to LTAB").

¹³ Opposition to Petition for Reconsideration and Request for Initiation of License Revocation Proceeding, dated Mar. 14, 2002, by Mayer Reprographics, Inc. ("Mayer Opposition").

¹⁴ *See* Letter, dated August 13, 2002, from Jack Mayer, Mayer Reprographics, Inc. to Roberto Mussenden, Federal Communications Commission ("Mayer Response to PRB").

¹⁵ Mayer Response to PRB at 1.

¹⁶ Mayer Response to LTAB at 3; Mayer Opposition at 2.

¹⁷ Mayer Response to LTAB at 2.

removed on that date.¹⁸

6. With respect to its operations between December 31, 1999 and March 2002, Mayer did not produce any of the documentation suggested by PRB to demonstrate that it was operating Station KNGK514 during that period.¹⁹ Mayer states that it “continued radio communications on the community repeater long past the date that Agnes Pennington is using as a termination date for our community repeater,” but it is “certain that there was not more than a year between the time that we discontinued use of the community repeater, and the time we began use of our own repeater.”²⁰ Mayer suggests that if Pennington’s monitoring of the channel did not detect any use, it was because Mayer uses its radio system only sporadically, to maintain contact with personnel responsible for delivering blueprints and other company products to customers and to provide directions in the event that a member of the delivery crew is unable to find a customer’s location.²¹ Mayer states that it has always operated on a base-mobile basis, and never in mobile-only mode, because its drivers have no reason to communicate with each other.²² Mayer also states that Henry Mayer, from whom Pennington states she obtained her information regarding Mayer’s operations, has no knowledge of Mayer’s telecommunications activities,²³ because Jack Mayer handles such matters.²⁴

7. *Discussion.* We conclude that the record in this proceeding does not establish that the license for Station KNGK514 canceled automatically. Pennington’s statements do not sufficiently establish that Mayer failed to operate the subject station for an entire year. That Mayer terminated its service agreement to use the community repeater does not establish that Mayer ceased operating altogether.²⁵ While Pennington alleges that she has heard no co-channel voice traffic, data transmissions or any other emissions that would indicate that Mayer was operating on the subject frequencies, the record does not contain sufficient data supporting this allegation.²⁶ For example, we note that Pennington did not submit monitoring studies substantiating claims of inoperation.²⁷ We further note that Pennington’s allegations of inoperation are undercut by the letter confirming the removal of Mayer’s equipment from Mount San Miguel. Although we recognize that Mayer’s response to PRB’s inquiry provided far less information than we would have desired, we conclude that Pennington has not provided enough information to support her contention that Mayer’s authorization automatically cancelled pursuant to Section 90.157 of the Commission’s Rules. We therefore deny the Pennington PFR.

¹⁸ *Id.* at Ex. IV.

¹⁹ Mayer states that there are no canceled checks or maintenance records regarding its own repeater, because it has no service agreement with any operator, and the equipment is so reliable that it does not require maintenance. Mayer Response to PRB at 1.

²⁰ *Id.*

²¹ Mayer Response to LTAB at 3-4.

²² *Id.* at 3.

²³ *Id.* Mayer provided an affidavit from Henry Mayer stating that, while he did have a brief conversation with Agnes Pennington, he did not discuss the station’s operations, because he has no knowledge of such matters. *Id.* at Ex. V.

²⁴ We note that Jack Mayer is the only Mayer listed on the license for Station KNGK514.

²⁵ See S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8157 ¶ 8 (2001) (statement from the licensee’s equipment provider did not establish discontinuance of operations) (*S&L*); Interstate Consolidation, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd 3330, 3334 ¶ 10 (2000) (that licensee leased access to a community repeater did not prove that it also stopped using its separately licensed facility).

²⁶ See Brookfield Development, Inc., *Order*, DA 13-1756, ¶ 7 (WTB PSPWD rel. May 23, 2003), and cases cited therein.

²⁷ See *S&L*, 16 FCC Rcd at 8157 ¶ 8.

8. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by filed by Agnes Pennington dba Radio America on February 6, 2002 IS DENIED.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau